

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SARAH ANNE MEYERS
14535 Cordial Lane #310
Huntersville, NC 28078

Case No.: R-2098

OAH No.: L2007100782

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on May 13, 2008.

It is so ORDERED May 6, 2008.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition to Revoke Probation
Against:**

SARAH ANNE MEYERS

Respiratory Care Practitioner License No. 25152

Respondent.

Case No. R-2098

OAH No. L2007100782

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings (OAH), on March 4, 2008, in Los Angeles, California. Complainant was represented by Peggie Bradford Tarwater, Deputy Attorney General. Sarah Anne Meyers (Respondent) was present and represented herself.

At the administrative hearing, the Petition to Revoke Probation was amended as follows: the Second Cause to Revoke Probation (paragraphs 13 and 14, at page 4, line 13, through page 5, line 11) was stricken.

Oral and documentary evidence was received and argument was heard. The record was left open to allow Complainant to transmit to Respondent a copy of a letter from the North Carolina Respiratory Care Board and to allow Respondent to file additional letters from her employer and from the North Carolina Respiratory Care Board. On March 21, 2008, Complainant's counsel sent to Respondent and filed with OAH a copy of a February 27, 2008 letter from the North Carolina Respiratory Care Board, along with Complainant's counsel's March 10, 2008 cover letter to Respondent, enclosing the North Carolina Respiratory Care Board letter. Both letters were marked collectively as Complainant's Exhibit 12 and admitted into evidence. Respondent did not submit any additional documents. The record was closed and the matter was submitted for decision on March 26, 2008.

FACTUAL FINDINGS

1. On August 16, 2007, Complainant Stephanie Nunez filed the Petition to Revoke Probation while acting in her official capacity as Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On May 26, 2006, the Board issued Respiratory Care Practitioner License Number 25152 to Respondent. The license is in full force and effect and will expire on August 31, 2009, unless renewed.

3. In a disciplinary action entitled *In the Matter of the Statement of Issues Against Sarah Ann Meyers*, Case No. S-355, the Board issued a decision, effective May 26, 2006, in which Respondent was issued a probationary license for two years, subject to specified terms and conditions.

4. Condition 3 of Respondent's probation stated, in pertinent part:

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs, and any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

[¶] . . . [¶]

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

5(a). On October 12, 2006, Respondent appeared at a collection site to provide a urine specimen for testing and analysis in accordance with her probation monitoring program. The laboratory report from Compass Vision Inc. (CVI) indicated she tested positive for Ethyl Glucuronide at a level of 1500 nanograms per milliliter (ng/mL), indicating her consumption of alcohol. The 1500 ng/mL was above the established laboratory cutoff level of 250 ng/mL.

5(b). On a Drug Questionnaire, dated January 5, 2007, Respondent admitted that she consumed one or two beers on October 11, 2006.

6. On October 24, 2006, Respondent's Board Probation Monitor sent her a letter by certified mail, noting her positive test for Ethyl Glucuronide on October 12, 2006, and reminding her that, pursuant to the terms of her probation, she must abstain from the use of alcohol. The letter further informed Respondent that it served as a final warning and that any positive result over the established cut-off level would result in further disciplinary action.

7. On December 19, 2006, Respondent provided a urine specimen for testing and analysis. The laboratory report from CVI indicated she tested positive for

Ethyl Glucuronide at a level of 2500 ng/mL, indicating her consumption of alcohol. The 2500 ng/mL was above the established laboratory cutoff level of 250 ng/mL.

8. On January 16, 2007, Respondent provided a urine specimen for testing and analysis. The laboratory report from CVI indicated she tested positive for Ethyl Glucuronide at a level of 5500 ng/mL, indicating her consumption of alcohol. The 5500 ng/mL was above the established laboratory cutoff level of 250 ng/mL.

9. Respondent's use of alcohol and her three positive test results over the established laboratory cutoff level for Ethyl Glucuronide are violations of Condition 3 of her probation.

10. Prior to her licensure, Respondent sustained two convictions in 2001 for driving with a blood alcohol content of .08 percent or higher, which was the basis for her current two-year probation with the Board from 2006 through 2008.

11. On February 16, 2007, Respondent moved to North Carolina and began working as a licensed respiratory therapist in that state.

12. On February 20, 2007, Respondent's Board Probation Monitor sent Respondent a letter, advising her that, "as of February 16, 2007, your license was placed on a tolling status, [sic] therefore upon your return to California, you will have one year, three months and ten days remaining to serve your probation." The letter specifically noted that the cost recovery requirement would not be tolled.

14. At the administrative hearing, Respondent admitted that she tested positive for alcohol consumption on three occasions, despite her stipulated probation condition to refrain from drinking alcohol. She explained that she drank alcohol occasionally because she had been in an abusive relationship and was "self medicating." Respondent moved to North Carolina to escape that relationship.

15. However, Respondent also admitted that, on August 19, 2007, she consumed "too much" alcohol while at a concert with friends in North Carolina. She dismissed the significance of her August 19, 2007 use of alcohol, noting that her California probation was tolled at the time.

16. Following her alcohol consumption on August 19, 2007, the North Carolina Respiratory Care Board (North Carolina Board) placed Respondent on probation from October of 2007 through October of 2008. As conditions of that probation, Respondent was required to submit to random urine tests and to undergo psychotherapy.

17. In compliance with the North Carolina Board's probation, Respondent has begun psychotherapy sessions.

18. Respondent does not “feel like an alcoholic,” and does not consider herself to be an alcoholic. In support of this assertion, she stated that her 2001 alcohol-related convictions will “come off” her driving record in May and July of 2008, and that she has “not been in trouble with the law” since her 2001 convictions. Respondent does not attend Alcoholics Anonymous (AA) meetings.

19. Respondent assured the Board that she takes her job seriously and would not drink alcohol prior to working or go to work with a hangover.

20. Several of Respondent’s co-workers submitted letters of reference, praising Respondent’s work as a respiratory therapist in North Carolina.

Costs of Enforcement

21. Complainant submitted as evidence of the costs of enforcement of this matter a Declaration of Costs (Costs Certification), signed by Complainant, certifying that the Board had incurred \$6,334.75 in enforcement costs through February 29, 2008. The enforcement costs included the following: for fiscal year 2006-2007, four paralegal hours at \$101 per hour (subtotal \$404); and for fiscal year 2007-2008, 4.75 paralegal hours at \$101 per hour (subtotal \$470.75), and 34.5 attorney hours at \$158 per hour (subtotal \$5,451).

22. Complainant submitted as additional evidence of the costs of prosecution the declaration of the Deputy Attorney General assigned to the case, along with a detailed billing statement documenting the time billed by the Department of Justice, Office of the Attorney General, for this case through February 26, 2008. The declaration and billing statement set forth the same amounts billed by the paralegal as those set forth in the Costs Certification. However, the declaration and billing statement documented only 34.25 attorney hours billed at \$158 per hour (subtotal \$5,411.50). The total costs billed were \$6,295.25.

23. Given that the detailed billing statement documented only 34.25 attorney hours, it appeared that the 34.5 attorney hours set forth in the Costs Certification was an error, and that the correct total amount billed for attorney hours was \$5,411.50.

24. The evidence established that Complainant incurred costs of \$6,295.25 in the prosecution of this matter, all of which are deemed reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent’s probation and to impose the stayed revocation of Respondent’s respiratory care practitioner’s license for violating Condition 3 of her probation, by failing to abstain from the use of alcohol as evidenced by her positive laboratory tests, as set forth in Factual Findings 4, 5, 7, 8 and 9.

2. Pursuant to Business and Professions Code sections 3753.5, subdivision (a), and 3753.7, Complainant is entitled to recover reasonable costs of prosecution of this matter in the amount of \$6,295.25, as set forth in Factual Findings 21 through 24.

3(a). Respondent has a history of alcohol abuse, beginning in 2001 or earlier, which was the basis of her current probation. Despite agreeing to refrain from alcohol use, she continued to consume alcohol on several occasions, in direct violation of her probation and after being sent a warning letter. Although she maintains that her alcohol abuse was the result of an abusive relationship, she continued her excessive alcohol consumption until at least six months after leaving that relationship. Furthermore, Respondent will not admit to an alcohol abuse problem, does not attend AA meetings and has not shown any significant effort at rehabilitation. Her only effort has been the psychotherapy sessions which were ordered by the North Carolina Board. Consequently, this involuntary rehabilitation effort is given little weight, although Respondent is encouraged to continue her efforts at rehabilitation.

3(b). Respondent has been a licensed respiratory therapist for two years. For the entire time of her licensure, she has been on probation with the Board. Her probation violations began only five months into her probation. The evidence did not establish that extending Respondent's probation another several years would make her more likely to comply with her probationary terms.

3(c). Given Respondent's minimal efforts at rehabilitation, her failure to admit an alcohol abuse problem and her continued violation of probationary terms, the likelihood of recidivism is high.

4. While at this point, Respondent's personal troubles have apparently not seeped into her professional life, the Board is not required to postpone imposition of discipline until Respondent's alcohol abuse problem begins to affect her work. (*In re Kelley* (1990) 52 Cal.3d 487, 495.)

5. The evidence did not establish that an extension of probation would help Respondent move toward complete rehabilitation, which should be achieved prior to asking again for the public's trust. Given the foregoing, the order that follows is necessary for the protection of the public health, safety and welfare.

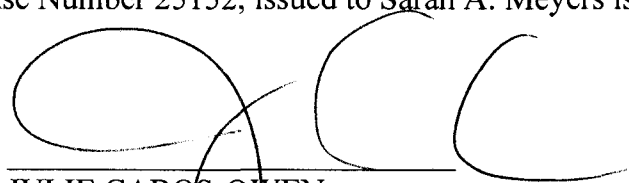
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respiratory Care Practitioner License Number 25152, issued to Sarah A. Meyers is hereby revoked.

DATED: April 21, 2008

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'C' and 'O'.

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings